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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-392

Filed: 21 November 2017

Buncombe County, Nos. 15 CRS 1081-82

STATE OF NORTH CAROLINA

v.

MARCUS RESHAWN SINGLETON

Appeal by Defendant from judgments entered 17 November 2016 by Judge Marvin P. Pope, Jr. in Superior Court, Buncombe County. Heard in the Court of Appeals 26 October 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Teresa Townsend, for the State.

Mark Hayes for Defendant-Appellant.

McGEE, Chief Judge.

Marcus Reshawn Singleton (“Defendant”) appeals from judgments entered following the revocation of his probation. Defendant contends the trial court lacked the authority to revoke his probation based on its finding that he absconded. For the reasons discussed below, we vacate the trial court’s judgments and remand for further proceedings consistent with this opinion.

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I. Background

Defendant pleaded guilty on 4 March 2015 to two counts of common law robbery allegedly committed on 10 April 2003. Defendant was sentenced to two consecutive terms of twenty to twenty-four months' imprisonment. The trial court suspended Defendant's sentences and placed him on supervised probation for a period of thirty-six months.

The State filed a probation violation report on 23 September 2016 that alleged Defendant had violated the terms of his probation by: (1) failing to obtain a mental health evaluation;¹ (2) failing to comply with electronic monitoring by removing, and then abandoning, his GPS ankle device; (3) willfully avoiding supervision by making his whereabouts unknown; and (4) failing to comply with the rules and regulations of the Community Threat Group Program.

The trial court conducted a probation violation hearing in Buncombe County Superior Court on 27 October 2016. Defendant admitted he willfully violated his probation. The matter was continued until 17 November 2016 to allow the parties to determine the amount of jail credit Defendant was entitled to receive. At the continuation hearing on 17 November 2016, the trial court found Defendant absconded by removing his electronic monitoring device. Defendant admitted that he absconded, but contended he fell within the absconding "donut hole" and as a result

¹ Defendant alleges that, although the report alleged he had failed to complete a mental health evaluation, the State "[did] not specify what condition of probation that failure violated."

was ineligible for probation revocation. The trial court revoked Defendant's probation and activated Defendant's suspended sentences. Defendant appeals.

II. Probation Revocation for Absconding

On appeal, Defendant argues the trial court erred by revoking his probation because he was not subject to the statutory provision that makes absconding a regular condition of probation. The State concedes error, and we agree.

A. *Standard of Review*

A hearing to revoke a defendant's probationary sentence only requires that the evidence be such as to reasonably satisfy the judge in the exercise of his sound discretion that the defendant has willfully violated a valid condition of probation or that the defendant has violated without lawful excuse a valid condition upon which the sentence was suspended. The judge's finding of such a violation, if supported by competent evidence, will not be overturned absent a showing of manifest abuse of discretion.

State v. Jones, 225 N.C. App. 181, 183, 736 S.E.2d 634, 636 (2013) (citation and quotation marks omitted). "Nonetheless, when a trial court's determination relies on statutory interpretation, [this Court's] review is *de novo* because those matters of statutory interpretation necessarily present questions of law." *State v. Johnson*, ___ N.C. App. ___, ___, 783 S.E.2d 21, 24 (2016) (citation and quotation marks omitted).

B. *Analysis*

In North Carolina, as a regular condition of probation, a defendant must "[n]ot abscond by willfully avoiding supervision or by willfully making the defendant's

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whereabouts unknown to the supervising probation officer[.]” See N.C. Gen. Stat. §15A-1343(b)(3a) (2015). Absconding first became a regular condition of probation when the General Assembly enacted the Justice Reinvestment Act of 2011 (“JRA”). Among other things, the JRA imposed limits on trial courts’ authority to revoke a defendant’s probation. See N.C. Gen. Stat. § 15A-1344(a) (2015) (providing in part that “[t]he court may only revoke probation for a violation of a condition of probation under G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a), except as provided in G.S. 15A-1344(d2).”). Under the current statutory scheme, the trial court may revoke a defendant’s probation if it finds the probationer (1) committed a new criminal offense, see N.C. Gen. Stat. § 15A-1343(b)(1) (2015), or (2) absconded, as defined in N.C.G.S. § 15A-1343(b)(3a). Additionally, pursuant to N.C. Gen. Stat. § 15A-1344(d2), if a defendant violates a condition of probation other than those specified in N.C.G.S. 15A-1343(b)(1) and N.C.G.S. § 15A-1343(b)(3a), the court may revoke a defendant’s probation if “the defendant has previously received a total of two [ninety-day] periods of confinement [for other probation violations] under this subsection.” See N.C. Gen. Stat. § 15A-1344(d2) (2015).

The JRA initially made the new absconding condition

effective for *probation violations* occurring on or after 1 December 2011. The effective date clause was later amended, however, to make the new absconding condition applicable only to *offenses* committed on or after 1 December 2011, while the limited revoking authority

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remained effective for probation violations occurring on or after 1 December 2011.

State v. Nolen, 228 N.C. App. 203, 205, 743 S.E.2d 729, 731 (2013) (quoting *State v. Hunnicutt*, 226 N.C. App. 348, 354-55, 740 S.E.2d 906, 911 (2013)) (first emphasis added) (internal citations omitted).

In the present case, it is undisputed that the trial court revoked Defendant's probation based on its determination that Defendant absconded. While Defendant's *probation violations* occurred after 1 December 2011, the underlying *offenses* for which he received probation occurred in 2003, before the JRA took effect. Thus, at the time Defendant committed those offenses, he "was not yet subject to the new absconding condition of probation set out in N.C. Gen. Stat. § 15A-1343(b)(3a)." *Id.* at 206, 743 S.E.2d at 731. Consequently, we conclude the trial court erred by revoking Defendant's probation based on absconding. Accordingly, we vacate the trial court's judgments activating Defendant's suspended sentences and remand for further proceedings consistent with the provisions found in N.C.G.S. § 15A-1344.

VACATED AND REMANDED.

Judges STROUD and DILLON concur.

Report per Rule 30(e).